

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

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5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

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11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 August 22, 2017

17 2:01 PM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: J. PEREYRA

1 HEARING re Adversary proceeding: 08-01789-smb Securities

2 Investor Protection Corporation V. Bernard L. Madoff

3 Investment Securities, LLC. et al Hearing on Settlement of

4 Order regarding Day 2 Deposition of Bernard Madoff

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6 HEARING re Debtors' Objection to Larsen & Toubro Limited

7 Claim

8

9 HEARING re Debtors' Objection to Claim No. 4131 (R. T. Cargo)

10

11 HEARING re Debtors' Objection to Steuben County Industrial

12 Development Agency Claims

13

14 HEARING re Debtors' Twentieth Omnibus Objection to Disallow

15 and Expunge Scheduled Claims Designated as Contingent,

16 Unliquidated and/or Disputed

17

18 HEARING re Debtors' First Omnibus Objection to Disallow and

19 Expunge Certain Duplicate Claims (Enerbank Claims)

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21 HEARING re Debtors' Third Omnibus Objection to Disallow and

22 Expunge Certain Duplicate Claims (Enerbank Claims)

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24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. Madoff. All right, I  
3 have -- this conference was scheduled to deal with certain  
4 objections to the proposed order related to the date two  
5 deposition topics, day two, under the day two deposition  
6 participants. So I hear the objections to the proposed  
7 order.

8 MS. CHAITMAN: Thank you, Your Honor. Helen Davis  
9 Chaitman on behalf of a large number of defendants. Your  
10 Honor, it was clear from all of the transcripts from the  
11 very first hearing at which the Court heard argument on my  
12 motion to permit us to depose Mr. Madoff, that the Court had  
13 set a bar date of July 7th, 2016, which was the date on  
14 which I filed that motion.

15 So anyone whose discovery cut off had preceded  
16 that date. The Court held that those people could not  
17 participate in Madoff's deposition, but everybody else  
18 could. And in fact, Mr. Murphy acknowledged that on the  
19 record. And there had never been any dispute about it.

20 The Trustee apparently seeking to take some kind  
21 of advantage, has continued to use the Exhibit A, which I  
22 had filed with my motion, which when I filed it, at that  
23 point, I was only including those of my clients whose  
24 accounts dated back into the 1980s, because at that point, I  
25 was only seeking discovery about the 1980s.

1           Once Mr. Madoff started to testify, it became  
2           appallingly apparent that there had been tremendous  
3           misrepresentations of the facts in this case, and  
4           particularly that Mr. Dubinsky's report was completely  
5           unfounded.

6           And at that point, everyone recognized that this  
7           was something, which concerned everyone. It wasn't simply  
8           that it concerned the trading in the 1980s, because you  
9           know, as Mr. Sheehan admitted when we were here last time,  
10          that he said that Madoff purchased \$16 billion of Treasury  
11          bills with investment advisory customers' money. And that  
12          was something, of course, that had never been admitted to  
13          the Second Circuit, to Judge Lifland, to Your Honor.

14          So the Trustee's position is simply because I  
15          didn't check Exhibit A every time a revised order was  
16          submitted, and it was simply limited to the people who have  
17          accounts going back to the 1980s, that therefore, everyone  
18          else should be barred from participating.

19          And this is -- it's a denial of due process. It's  
20          unfair, and frankly, it's embarrassing that the Trustee  
21          would seek to take that kind of advantage. It's one thing  
22          if he can win on the merits, but to try to win by hook and  
23          by crook just seems beyond credibility.

24          And the other thing that's really weird about it,  
25          Judge, is one of the things that we had agreed on was that

1 the time for service of expert reports in all of my cases  
2 would be deferred. Your Honor ruled that the dates would be  
3 deferred, and because we were taking this discovery, so that  
4 I could then submit one expert report on behalf of all of my  
5 clients.

6 And as recently as August 10th, 2017, Baker asked  
7 me to agree to the form of an order which was submitted to  
8 Your Honor, and which you signed, which said, "With the  
9 exception of," and then it named three adversary  
10 proceedings, which are proceedings on which I've withdrawn  
11 the reference, "the service deadlines for expert reports  
12 served by any party in all adversary proceedings represented  
13 by Chaitman will be determined and ordered by this Court  
14 following the completion of the deposition of Bernard  
15 Madoff." So this is --

16 THE COURT: So why don't we get back to the day  
17 two topics? That's what we're dealing with.

18 MS. CHAITMAN: No, we're -- no, the only --

19 THE COURT: I thought you were objecting to the --

20 MS. CHAITMAN: My only objection -- my letter says  
21 that my only objection is with respect to the Exhibit A.

22 THE COURT: Okay. This is the -- well --

23 MS. CHAITMAN: I wrote a letter on August 10th.

24 THE COURT: Yeah, well, you started to read about  
25 expert reports, though, is that in this order?

1 MS. CHAITMAN: No, what I'm trying to say, Judge,  
2 maybe I'm not being clear. My only objection is with  
3 respect to Exhibit A, because what the Trustee is saying is,  
4 it doesn't include all of my clients, whose discovery cutoff  
5 had not occurred as of July 7th, 2016.

6 THE COURT: But didn't the discovery cutoff  
7 subsequent -- didn't the discovery deadline subsequently  
8 cutoff?

9 MS. CHAITMAN: No, because Your Honor held that  
10 the discovery, with respect to Madoff's deposition would  
11 apply to all defendants whose cases had not ended as of July  
12 7th.

13 THE COURT: Oh I thought it was only to the  
14 participating customers in the order. I'm going to just  
15 check the September 29th order here. But --

16 MS. CHAITMAN: Your Honor, what happened --

17 THE COURT: In other words, the universe, as I  
18 recall, as I understand it, there's a universe of your  
19 clients. Let's just talk about your clients, since that's  
20 what (indiscernible), who could participate in the Madoff  
21 deposition day one, right? And the initial cutoff was  
22 everybody, every case in which discovery had run already,  
23 right?

24 MS. CHAITMAN: The initial cutoff was every case  
25 in which discovery had gone.

1 THE COURT: Okay. But then there was a secondary  
2 cutoff, where you actually had an opt-in.

3 MS. CHAITMAN: Right.

4 THE COURT: Right?

5 MS. CHAITMAN: And I understood Your Honor's  
6 ruling to be, and Mr. Murphy's statement that the opt-in was  
7 for all defendants whose cutoff had not occurred, and who  
8 wanted to participate in Madoff's deposition. I intended  
9 that to reply to all of my clients. And clearly, Baker did  
10 because otherwise they never would have submitted this order  
11 that they submitted to you last week.

12 THE COURT: But I don't have the exhibit, but I'm  
13 looking at the September 29th, '16 order, and there is an  
14 Exhibit C, which identifies all of the participating  
15 customers who are entitled to participate -- who are  
16 permitted to participate in Madoff's deposition.

17 MS. CHAITMAN: Right.

18 THE COURT: And I thought now you wanted to add  
19 additional names to that?

20 MS. CHAITMAN: No, because what happened, Your  
21 Honor, is when I filed the motion to depose Mr. Madoff, I  
22 originally did it just on behalf of those clients, whose  
23 accounts dated back to the 1980s because I thought that the  
24 only relevant information Mr. Madoff had was with respect to  
25 the 1980s.



1           What has become apparent as a result of the first  
2           day of his deposition is that he has testimony which  
3           contradicts the position the Trustee has taken throughout  
4           these cases, even up to 2008. So that the deposition --

5           THE COURT: What was that position?

6           MS. CHAITMAN: He's testified, as Mr. Sheehan  
7           admitted a few weeks ago, that Madoff purchased up to \$16  
8           billion at a time of Treasury bills, with investment  
9           advisory customers' money. And you can match up those  
10          particular T-bills to the customer statements.

11          THE COURT: Okay. My recollection, and I've been  
12          in the case since 2014, is that everybody knew that BLMIS,  
13          or at least one part of BLMIS, was engaged in legitimate  
14          trading or actual trading.

15          As a matter of fact, one of your theories about  
16          why BLMIS wasn't a Ponzi scheme is because only 12 of 200  
17          employees are involved in the IA business, and the rest of  
18          the business was legitimate, all right?

19          MS. CHAITMAN: Yes.

20          THE COURT: So everybody always knew that Madoff  
21          was out there buying and selling securities. That's not new  
22          information.

23          MS. CHAITMAN: No, but what persuaded the Second  
24          Circuit to repeal, in essence, the Securities Investor  
25          Protection Act was the representation that Madoff had never

1 purchased securities with the investment advisory customers'  
2 money.

3 THE COURT: I don't know about the Second Circuit.  
4 If you think something occurred there, I guess you'll have  
5 to go back there. But all I'm saying or what I'm saying is  
6 regardless of when the Ponzi scheme began, whether it began  
7 in the 1970s, the 80s, the 90s or the 2000s, there was  
8 always the fact in this case that Madoff was actually -- or  
9 that BLMIS was actually buying and selling securities,  
10 albeit, ostensibly for its own account rather than for other  
11 customers, not IA customers. So there was always a reason  
12 to take Madoff's deposition about that. And I don't see  
13 what has changed.

14 MS. CHAITMAN: It changed because what Madoff  
15 testified was that the T-bills, which showed up on the  
16 customer statements were purchased by the personnel on the  
17 17th floor, which was where only the investment advisory  
18 business was, and it was purchased with money from the 703  
19 account.

20 THE COURT: Well, the second statement -- okay.  
21 But I don't recall, and I could be wrong that he testified  
22 that the (indiscernible) business was purchasing the T-  
23 bills.

24 MS. CHAITMAN: That's -- of course, that's what he  
25 testified.

1 THE COURT: Did he purchase -- did he testify to  
2 that?

3 MS. CHAITMAN: Yes.

4 MS. FEIN: The testimony was about -- are you  
5 referring to the (indiscernible) account testimony with  
6 respect to the J.P. Morgan 703 Account? But there were  
7 (indiscernible) -- there were (indiscernible) funds that  
8 were put into treasuries, like (indiscernible) and things  
9 like that.

10 THE COURT: No, I know that the purposes were made  
11 with the 703 account and cost of the money, but Ms. Chaitman  
12 just said he testified that the IA business, the 17-floor  
13 business, was the one that made those purchases.

14 MS. FEIN: That's not consistent with my  
15 recollection of the testimony. For the most part, it was  
16 re-involving third-party financial institutions that held  
17 certain treasuries, and that those treasuries were purchased  
18 by the legitimate side of the business.

19 THE COURT: The non-17th floor side of the  
20 business?

21 MS. FEIN: That's right.

22 MS. CHAITMAN: We can check the transcript. I  
23 didn't bring it with me, but my specific recollection is  
24 that he said as to certain confirmations which had the names  
25 of Frank (indiscernible), Robert (indiscernible), and Eric

1 (indiscernible), all of whom worked on the 17 floor  
2 exclusively, that they had access to Bloomberg terminals and  
3 they purchased T-bills with 703 account money. And this --  
4 this totally changes what this case is about.

5 THE COURT: You know, I don't have that testimony  
6 in front of me. But I know there were three different days  
7 of depositions.

8 MS. CHAITMAN: Judge, what is the -- you know, we  
9 have a situation here where on May 17, 2016, you ordered the  
10 Trustee to produce -- to put into the eData room any trading  
11 records that have not already been produced. The Trustee  
12 completely ignored that order. We're now trying to deal  
13 with (indiscernible) with the fact that they have millions  
14 of pages of documents, which constitute trading records,  
15 which we now have to figure out a way --

16 THE COURT: But I thought that the Trust -- I'm  
17 confused. I thought the Trustee had produced records that  
18 were made available, records of actual trading. Hasn't the  
19 Trustee done that?

20 MS. CHAITMAN: No. No, we got these records --

21 THE COURT: I'm getting different stories from  
22 (indiscernible).

23 MS. CHAITMAN: Well --

24 THE COURT: There may be more records, but in  
25 other words, the records of actual trades have been in this

1 case and been disclosed. There may be more. All I'm saying  
2 is whatever incentive you're now saying you have to ask  
3 Madoff questions about this, that existed before the Madoff  
4 deposition began. In other words, he -- there was evidence  
5 that there were actual trades and there was certainly an  
6 incentive to ask him whether those trades were allocated,  
7 for example, to IA customer accounts.

8 MS. CHAITMAN: Judge, we're confusing --

9 THE COURT: Isn't that what this is about?

10 MS. CHAITMAN: No, we're confusing --

11 THE COURT: Well, then I'm confused.

12 MS. CHAITMAN: We're confusing two different  
13 things. You may recall that we had an argument one day  
14 where you turned to -- I think it was Ted Jacobs, but it may  
15 have been Mr. Murphy -- and said, do you concede that Madoff  
16 in the market making business did any legitimate trading,  
17 and he said, we're not prepared to concede that. They now,  
18 of course, concede that.

19 THE COURT: I don't (indiscernible).

20 MS. CHAITMAN: But -- okay. But, the fact of the  
21 matter is, Judge, I'm talking about trading with investment  
22 advisory customers' money, and I'm talking about it  
23 occurring even in 2007 and 2008, where T-bills were  
24 purchased by Robert (indiscernible) Frank (indiscernible)  
25 and Erik(indiscernible), who worked on the 17 floor, only in

1 the investment advisory business, and they were using  
2 investment advisory customers' money.

3 THE COURT: And that information didn't come out  
4 before --

5 MS. CHAITMAN: It didn't come out --

6 THE COURT: -- April of 2017, or whenever the last  
7 day of the deposition was?

8 MS. CHAITMAN: It didn't come out until we deposed  
9 Madoff. This -- to me, this was absolutely shocking  
10 testimony. And the documents we -- the documents we -- the  
11 documents that we were -- that hadn't been produced when you  
12 ordered in May of 2016, when you ordered the Trustee to put  
13 any trading records in the eData room -- at that point, we  
14 didn't have any of the 1980s trading records. We're now  
15 able to match up Mr. (indiscernible), my 107-year-old  
16 client. Mr. (indiscernible) had a transaction where he  
17 looked like he bought convertible bonds of such-and-such  
18 corporation. We now have documents showing that Madoff  
19 owned those bonds.

20 THE COURT: Okay.

21 MS. CHAITMAN: So --

22 THE COURT: And you didn't know that -- when --

23 MS. CHAITMAN: No.

24 THE COURT: -- did you first learn that?

25 MS. CHAITMAN: We didn't have any of those

1 documents until this past April when they produced a whole  
2 bunch of reels.

3 THE COURT: So, you're saying that you didn't have  
4 any records of purchases made with customer money until  
5 when?

6 MS. CHAITMAN: Until Madoff testified, and I'd  
7 have to look up the transcript to --

8 THE COURT: Well, he first testified, I think, in  
9 April. That was my recollection.

10 MS. CHAITMAN: No, he testified once in December -  
11 -

12 THE COURT: Oh, December, right. That's right.

13 MS. CHAITMAN: And then in April.

14 THE COURT: All right. So, you're saying --  
15 you're saying --

16 MS. CHAITMAN: No, Judge --

17 THE COURT: You're saying you never saw those  
18 records, and hence, you had no reason to know --

19 MS. CHAITMAN: We had no way --

20 THE COURT: All right. Let me hear from the  
21 Trustee.

22 MS. CHAITMAN: We've gone through this whole  
23 profit withdrawal proceeding.

24 THE COURT: Oh, this is the -- when the Ponzi  
25 Scheme began proceeding.

1 MS. CHAITMAN: Right. But in the profit  
2 withdrawal litigation, the issue was whether Mr.  
3 (indiscernible), as one example, received the profit  
4 withdrawals, okay? That would be (indiscernible). It would  
5 be a non-issue if, in fact, we can now prove, as we can,  
6 that Madoff held the securities that he was selling to his  
7 investment advisory customers.

8 THE COURT: All right. Let --

9 MS. CHAITMAN: These were records from the -- but  
10 --

11 THE COURT: Let me hear what this information is  
12 disclosed about the fact that Madoff was buying actual  
13 securities with customer -- with money traceable to  
14 customers (indiscernible) 703 account, I assume.

15 MS. FEIN: Okay. I'm going to talk about a couple  
16 other things as well.

17 THE COURT: Well, why don't you -- why don't you  
18 deal with that one first?

19 MS. FEIN: Sure. So, in terms of when that  
20 evidence was made available, there has been evidence that's  
21 been available in the data room, including the  
22 (indiscernible) reports that Ms. Chaitman's referring to for  
23 years.

24 THE COURT: Well, that's what --

25 MS. FEIN: Yeah, so that information was -- much



1 of that information was available prior to 2017. And then  
2 the remainder of that information that pertains to the pre  
3 '92 period was produced in 2017, and is a topic for the  
4 deposition. So, that's something that we're not disputing.  
5 That's something that will be raised at the deposition.  
6 They have free rein to ask about those documents. We  
7 understand that those documents -- those that were made  
8 available in 2017 are those -- it's the third topic of  
9 discussion for the deposition.

10 So, the question about whether she has an  
11 opportunity to ask about those is not for -- not a question  
12 at all. We've agreed to that and it's in the language of  
13 the order that we post.

14 I think though we're getting a little confused  
15 about the procedure that happened last year. So, Ms.  
16 Chaitman reference the July 7th filing, the July 7, 2016  
17 filing, when she requested to depose Mr. Madoff. We then  
18 had a hearing before you July 20th that -- where we decided  
19 we would have a uniform consolidated efficient way to do the  
20 deposition and at that hearing you stated that all cases  
21 would be able to participate, that any (indiscernible) and  
22 good faith cases could participate. Any topic that they  
23 wanted to ask about they would put in their notice. They  
24 would put in --

25 THE COURT: Where discovery had not brought it.

1 The deadline had not run.

2 MS. FEIN: Where discovery had not run, yeah, and  
3 that was decided at a later hearing in terms of making sure  
4 that the cases for discovery had run as of July 7th couldn't  
5 come in because in those cases discovery had closed. And  
6 indeed, of the 36 adversary proceedings that are seeking to  
7 join here, 28 of them discovery has closed as of when the  
8 date that she requested those cases be added, which was  
9 August 10.

10 But for that procedure we noticed every good faith  
11 case, including all the cases, the 36 cases here and asked -  
12 - they were all permitted to participate. These cases did  
13 not say they wanted to participate. We had a deadline of  
14 August 5th 2016 where if you did not say by August 5th 2016  
15 you wanted to participate, you were not included in the  
16 deposition. And that's been the procedure and that's why I  
17 know Ms. Chaitman referenced our Exhibit A. That's what  
18 Exhibit A is, that the participating customers, those  
19 customers that came forward and said they wanted to  
20 participate in the deposition, Exhibit A, the December 29th  
21 order, and I have a copy of it too.

22 But something else that you said at the July 20th  
23 hearing, I just wanted to reference really quick, and I have  
24 a copy if you want to see it, but it goes to this issue of  
25 when Mr. Madoff has said things since and whether that's the

1 cause for their discovery, because really for these cases  
2 she's requesting additional discovery for these cases and --  
3 so it's page 26, line 16 you said, "You waited...", this is  
4 last year, so July 20th 2016. "You waited until the end of  
5 discovery to take Mr. Madoff's deposition, so even if he  
6 wasn't in prison and you waited too long, then you said,  
7 'Oh, now I need an extension of discovery because they took  
8 his deposition August 30th and he told us all these things.  
9 I wouldn't extend discovery for that.'"

10 And these are cases where discovery has closed in  
11 the vast majority of them. In the cases where it's been  
12 left open, they chose not to participate in Mr. Madoff's  
13 deposition.

14 THE COURT: Under the September 2016 order, did  
15 discovery continue to run in the cases that weren't part of  
16 the participating customers?

17 MS. FEIN: It only addresses the participating  
18 customers, so it does not extend discovery for any other  
19 case.

20 THE COURT: So, discovery has run out.

21 MS. FEIN: That's right.

22 THE COURT: Okay.

23 MS. FEIN: For 28 of the 36 cases it's already  
24 run. It's scheduled to run out by the end of the year for  
25 all 36 cases -- of the cases that she seeks to add and Ms.

1 (indiscernible) seeks to add, it'll run out by the end of  
2 the year, but --

3 THE COURT: So there are some cases where  
4 discovery hasn't run its course.

5 MS. FEIN: There are some cases where discovery  
6 hasn't run out and in those cases it's really an issue that  
7 the September 29th order was very clear that if you did not  
8 participate, you did not request to participate, you are not  
9 participating in the Madoff deposition.

10 THE COURT: That's day one and then there was a  
11 subsequent cut if you wanted to participate in day 2.

12 MS. FEIN: Yes, and day 2 was limited to just  
13 those participants that participated in day 1. So, the  
14 universe of participants for day 2 was whoever participated  
15 in day 1, because that was the list of parties who noticed  
16 the deposition.

17 And in terms of topics, topics were open. In  
18 terms of, you know, was there an issue that there were  
19 legitimate purchases after 1992, you raised that issue at  
20 the August 24th hearing which preceded the order being  
21 entered. You said, "Yes, it's going to be an issue that I  
22 can redo the language. Yes, it's going to be an issue, the  
23 strike date of the fraud. It's also going to be an issue  
24 were there legitimate trades after that start date and were  
25 those trades allocated to customer accounts."

1 THE COURT: I said that?

2 MS. FEIN: Yeah. It's -- I have the cite for you.  
3 I can hand you the transcript too. So, it's page --

4 THE COURT: Okay, I understand. Ms. Chaitman is  
5 saying look, you know, basically I've been sandbagged. You  
6 took the position that securities were never used or  
7 customer funds were never used to purchase securities,  
8 forget about the allocation issue for a moment. And now  
9 Madoff testifies that that's precisely what was done.

10 MS. FEIN: So, I think, and I wish we'd brought  
11 the testimony with us, I don't think the testimony really --  
12 if that's the argument, I don't think the testimony says  
13 that.

14 THE COURT: That's the problem I'm having with  
15 this whole thing. You're referring to testimony, Ms.  
16 Chaitman and she's referring to testimony.

17 MS. CHAITMAN: Let's adjourn this and let me  
18 submit the testimony.

19 THE COURT: Why don't we do this, if you want --  
20 as far as I'm concerned under the existing orders, only the  
21 original -- starting with the original participating  
22 customers, that was the universe that could participate in  
23 day 1. Discovery continued to run as to everybody else and  
24 then there was as further cut for day 2 when you had to opt  
25 in.

1 If you think there is a basis to modify those  
2 orders so that more people or more cases should be entitled  
3 to this day 2 deposition, you're going to have to make a  
4 motion to either vacate or modify those orders and lay this  
5 before me because my hearing it from both sides, you know,  
6 everybody's quoting another transcript from a year ago --

7 MS. CHAITMAN: Let me make a motion. I'd rather  
8 have it on the record anyway.

9 THE COURT: -- it just -- it, you know, it doesn't  
10 help me.

11 MS. CHAITMAN: Okay, that's fine.

12 MS. FEIN: I just want to state for the record  
13 that this is the fifth hearing we've had on the Madoff  
14 deposition so far. It's been going on for quite a while.  
15 We have deposition dates scheduled, one for the end of  
16 September, one for early November so I think those are not  
17 going to happen. And we were hoping that we could get  
18 through this because we know there's a lot coming after the  
19 deposition's over.

20 THE COURT: Well, the easiest -- I mean, if you  
21 really want to get through it, you can agree to let these  
22 additional cases in I guess and they can ask Madoff -- I  
23 mean, it doesn't matter whether one person or 36 people ask  
24 Madoff did you use customer money, you know, to buy  
25 securities. That one's already answered.

1 So, all these additional people can do is say  
2 here's my account, did you actually buy these securities and  
3 I would be shocked if he actually remembered that.

4 MS. FEIN: Well, that's the issue. It's a memory  
5 test and I think he -- no one's claiming that he has a  
6 photographic memory. It's really an expert issue. If  
7 there's a matched transaction, he can't testify I recall  
8 making that exact transaction.

9 THE COURT: So, if you want to make those day --  
10 look, I'm not saying you have to do it because I just don't  
11 remember how this came up, but if you want to let them ask  
12 those questions on day 2, that's one way to resolve it.

13 MS. FEIN: So, like we said, the topics are on  
14 deck for day 2 what wasn't already included in the day 1  
15 testimony and she did ask about that already as part of the  
16 day 1 testimony. But all the new topics are included as day  
17 2.

18 I think the issue is these parties never wanted to  
19 participate in Madoff's deposition, waited a full year --

20 THE COURT: Okay, but you're telling me that you  
21 want to complete this. I'm just offering a practical  
22 solution. You don't have to accept it.

23 You're telling me you want to complete this. You  
24 have the deposition dates. You know, frankly, I think this  
25 is a big deal about nothing as you do have people who are

1 going to participate in this deposition and, if I accept Ms.  
2 Chaitman's position, they're going to -- at least these  
3 people or some of them are going to establish that BLIMS  
4 used customer money to buy securities.

5 There's an allocation issue. I'd be shocked if  
6 Madoff recalls that. You know, from reading the deposition  
7 I don't think he was the bookkeeping guy.

8 MS. FEIN: Right.

9 THE COURT: He had the overview of this and all  
10 I'm saying is if you want to avoid all this and let these  
11 additional people come in and ask the question without  
12 objection, you can do that or, you know, Ms. Chaitman can  
13 make a motion, but I'll give you a deadline to do it, so  
14 this thing doesn't linger.

15 MS. FEIN: And there is one further issue. Just  
16 because other parties whose discovery was open and they did  
17 not act or participate in day 1 had already noticed day 2.  
18 They're represented by Loeb & Loeb. Certain parties noticed  
19 day 2. We rightfully pointed out that if you didn't  
20 participate in day 1, based on the order you can't  
21 participate in day 2.

22 THE COURT: It's in essence the same issue.

23 MS. FEIN: It is, but I'm saying they're not -- we  
24 can't just agree to let in Ms. Chaitman's clients because  
25 those parties would also want to participate and really any



1 party that was open as of a year ago would want to  
2 participate. So it's not -- I don't think we're in a  
3 position to say that we could agree to that.

4 THE COURT: When do you make the motion?

5 MS. CHAITMAN: What's today's date?

6 THE COURT: Today is August 22nd.

7 MS. CHAITMAN: Can I have two weeks?

8 THE COURT: Fine.

9 MS. CHAITMAN: Okay.

10 THE COURT: All right, just get a return date.  
11 September is a tough month for me, but get a return date.  
12 All right?

13 MS. CHAITMAN: Thank you, judge.

14 MS. FEIN: Thank you.

15 THE COURT: Okay. And just, you know what, submit  
16 an order so we don't have other people coming in in October,  
17 that anybody who wants to make a motion to modify the  
18 earlier orders to participate in day 2 must make it, let's  
19 say two weeks from tomorrow, get me the order. Otherwise,  
20 their challenge or their objections to the order or their  
21 attempts to modify the order will be rejected or awarded.  
22 That's essentially what we're doing here because the orders  
23 themselves say what they say and what you're really arguing  
24 is they shouldn't be enforced or they should be vacated or  
25 modified. We'll set this.

1 MS. CHAITMAN: Okay.

2 THE COURT: Issuing subsequent disclosure, then  
3 you can explain to me and show me how this information was  
4 provided or at least available beforehand so anybody could  
5 have gone and looked at the data because I'm still not sure  
6 I understand how the data works or how it's populated.

7 MS. CHAITMAN: So, we're talking about September  
8 5th.

9 THE COURT: That's fine. You can have two weeks  
10 to respond and I'll give you seven days to reply, so just  
11 pick a return date. It's going to be the latter part of  
12 September anyway and there are the holidays then it's a  
13 tough end of the month.

14 MS. CHAITMAN: Thank you, judge.

15 THE COURT: Okay.

16  
17 (Whereupon these proceedings were concluded at  
18 2:28 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

Digitally signed by Sonya Ledanski  
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Date: August 24, 2017